LOW CHIT BAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Sinnathuray J.) October 10, 1985]
[Singapore – Criminal Motion No. 38 of 1985]

Criminal Law and Procedure – Bail – Application for reduction.

This was an application for reduction of bail fixed at $1,000,000 in two sureties. The applicant had 41 charges for abetment of conspiracy to cheat, offences punishable under sections 420 and 109 of the Penal Code. The sum involved amounted to $3,933,533.20. It was submitted for the applicant that the bail be reduced to $500,000 in two sureties on the ground that there was difficulty in obtaining instructions from the applicant whilst he was in custody. The application was opposed. It was revealed that the applicant, a Singapore citizen, had travelled on a forged Philippines passport and he also had a valid passport issued by the Republic of China.

Held: (1) on the facts before the court the overriding consideration was that there was every likelihood that the applicant would abscond from Singapore to evade trial if bail was reduced. On this ground only, his application must be refused;

(2) having regard to the serious charges and the amounts involved, the bail of $1,000,000 in two sureties was not excessive.

CRIMINAL MOTION.

Francis T. Seow for the applicant.
Roy G. Neighbour (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: In this application for reduction of bail fixed at $1 million in two sureties, the applicant, Low Chit Bah, has 41 charges for abetment of conspiracy to cheat, offences punishable under sections 420 and 109 of the Penal Code (Cap. 103). The charges allege that the applicant conspired with others to cheat seven off-shore and merchant banks in Singapore of a sum totalling $3,933,533.20.

Counsel for the applicant submitted that the bail be reduced to $500,000 in two sureties on the ground that there was difficulty in obtaining instructions from the applicant whilst he was in custody.

The application was opposed. There was affidavit evidence that the applicant, a Singapore citizen, had travelled on a Philippines passport, No. 0058318, under the name of John L. Santo and had successfully entered Singapore on three occasions. This passport has since been confirmed by Interpol to be forged.

The applicant also holds a third passport. This one is a valid passport issued by the Republic of China.

On another aspect, it is affirmed by Mr. Vinod Kumar Dube, one of the solicitors for the applicant, that the applicant "is a businessman for the last 20 odd years and is of hitherto unblemished character". One would have thought that in those circumstances the applicant would have no difficulty in finding persons of good character with sufficient funds to stand bail for him.

On the subject of funds, the learned Deputy Public Prosecutor said that the applicant has recently transferred monies into Singapore from abroad – HK$40,375.55, HK$155.86, and a third transfer of S$1,421.43. Whatever they may be for, the monies are certainly insufficient for bail.

There is always some difficulty in obtaining instructions from an accused person in prison. In this case, it would be that there would be more difficulty. This is, however, only one of the considerations in determining bail and the quantum for the bail. On the facts before me the overriding consideration is that there is every likelihood that the applicant would abscond from Singapore to evade trial if bail is reduced. On this ground alone his application must be refused. In any event, having regard to the serious charges and the amounts involved, I was of the opinion that the bail of $1 million in two sureties was not excessive. Accordingly, I dismissed the application.

Application dismissed.

Solicitors: *Francis T. Seow*.

LARIZA (SINGAPORE) PTE. LTD. v. BANK NEGARA INDONESIA 1946 (NO. 2)

[C.A. (Thean J.) December 6, 1985]
[Singapore – Civil Appeal No. 46 of 1984]

Practice and Procedure – Stay of execution – Judgment of Court of Appeal – Judge sitting alone as Court of Appeal – Jurisdiction to grant – "Any proceedings" – "Pending the appeal" – True construction of – Supreme Court of Judicature Act (Cap. 15), s. 36(1).

Jurisdiction – Judge sitting alone as Court of Appeal – Jurisdiction to order stay of execution of judgment of Court of Appeal – "Pending the appeal" – Supreme Court of Judicature Act (Cap. 15), s.36(1).

By a notice of motion the respondents sought for the following orders: "(1) That the appellants be restrained whether by themselves, or their officers, employees, agents, the Sheriff, Singapore or otherwise howsoever from enforcing or executing on the judgment of the Court of Appeal herein dated November 6, 1985 whether by Writ of Seizure and Sale No. 1712 of 1985 or otherwise pending the outcome of the respondents' Motion filed on December 2, 1985 for leave to appeal to the Judicial Committee of Her Brittanic Majesty's Privy Council against the whole of the said judgment and for execution on the said judgment to be stayed pending the outcome of such appeal. (2) That the costs of this Motion be costs in the cause."

Held: (1) on the true construction of the words "pending the appeal" in s.36(1) of the Supreme Court of Judicature Act and on the authorities of *In re Clagett's Estate*(1) and *Salt* v. *Cooper*(2), the appeal was still pending and therefore a judge sitting alone as a Court of Appeal had jurisdiction to make order;

(2) in the circumstances of the case as an interim injunction measure the order sought could be made.

Cases referred to:

(1) *In re Clagett's Estate* (1882) 20 Ch.D. 637, 655.
(2) *Salt* v. *Cooper* (1881) 16 Ch.D. 544, 551

COURT OF APPEAL.

H. C. Hiew for the appellants.
Chelva Rajah for the respondents.

Cur. Adv. Vult.

Thean J. (sitting alone as a Court of Appeal, delivering oral Judgment): The words "any proceedings" at the commencement of section 36(1) of the Supreme Court of Judicature Act are extremely wide, and, in my view, include the application to the Court of Appeal made by way of Notice of Motion dated December 2, 1985 which is to be heard on January 13, 1986. The next question is whether the circumstances in which an order under section 36(1) may be made have arisen or subsist, and there are three limbs under section 36(1). Mr. Chelva Rajah submits that his application falls within the first and second limbs of that section. In my view, the application does not fall within the first limb; the order sought is not a direction incidental to the Motion. There remains the second limb, and the question really turns on the true construction of the words "pending the appeal". The Court of Appeal has delivered judgment in this appeal; but on the authorities of *In re Clagett's Estate*(1) and *Salt* v. *Cooper*(2), the appeal is still pending. The application therefore falls within the second limb of section 36(1) and I have jurisdiction to make the order.

The next question is whether the order applied for ought to be made. On this point, in view of what is stated in the affidavits and the fact that the application for a stay of execution of the Judgment will be heard by the Court of Appeal on January 13, 1986, I have decided as an interim injunction measure to make the order sought. There will be an order in terms of the application. The respondents will have to pay for the costs of this application and all the costs incurred by appellants in the execution proceedings.

Order granted.

Solicitors: *Godwin & Co.; Tan Rajah & Cheah.*